REMARKS

The Notice of Noncompliant Amendment dated June 6, 2008 states that Applicants' Reply filed on March 3, 2008 was noncompliant because the Reply did not contain a response to the rejection under 35 U.S.C. 102 in view of Robl *et al.* and Evans *et al.* issued in the Office Action dated April 4, 2007.

Traversal of finding of noncompliance

Applicants traverse the finding of noncompliance for two reasons. First, if the USPTO found Applicants' response of October 4, 2007, to be non-compliant with respect to the Robl *et al.* rejection, that finding should have been stated in the first Notice of Noncompliant Amendment, issued January 2, 2008. Instead, this finding was reserved for a second Notice of Noncompliant Amendment that was not issued until June 6, 2008.

Secondly, Applicants assert that the initial Response, dated October 4, 2007, contained a sufficient response to the Robl *et al.* rejection. Specifically, the Response stated:

> First, the methods of claims 1, 8, 29 and 78 all require the formation, isolation, and separation of a teratoma, and from which the resultant cells are isolated. Applicants submit that the formation, isolation, and separation of such a teratoma is neither expressly nor inherently disclosed in any of the cited references.
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> Second, claims 1, 8, 21, 22, 27, 29, 37, 78 and 92 all require that the donor cell used in the nuclear transfer be senescent or near-senescent. Applicants submit that the use of such senescent or near-senescent cells for nuclear transfer donors is neither

expressly nor inherently disclosed in any of the cited references. Thus, although the cited references may refer to cells, etc. produced by nuclear transfer, none of these references disclose cells, etc. that resulted from the use of senescent or near-senescent cells as a donor for nuclear transfer.

Since the Robl *et al.* rejection was sufficiently addressed in the original Reply, and because the USPTO could have raised the Robl *et al.* issue in the first Notice of Noncompliant Amendment, at least the time period between March 3, 2008 and the date of filing of the instant response should not reduce patent term.

Nevertheless, solely to expedite prosecution, herein Applicants present an explicit discussion of the Robl *et al.* rejection.

Rejections Under 35 U.S.C. § 102 over Robl *et al.* and Evans

Claims 1-39 and 68-105 were rejected under 35 U.S.C. 102(b) as allegedly anticipated by Robl *et al.* (WO 98/07841) as evidenced by Evans *et al.* (Nature Genetics, 23:90-93, 1999). Specifically, the Office Action alleges that Robl *et al.* taught a method of cross-species nuclear transfer, and that Evans *et al.* teaches that mitochondria are inherently transferred in a nuclear transplantation protocol such as that used by Robl *et al.* Applicants respectfully traverse.

First, the methods of claims 1, 8, and 78 all require the formation and isolation of a teratoma, from which the resultant cells are isolated. Applicants submit that the formation and isolation of such a teratoma is neither expressly nor inherently disclosed in any of the cited references.

Second, claims 1, 8, 21, 22, 27, 29, 37, 78 and 92 all require that the donor cell used in the nuclear transfer be senescent or near-senescent. Applicants submit that the use of such senescent or near-senescent cells for nuclear transfer donors is neither expressly nor inherently disclosed in any of the cited references. Thus, although the cited references may refer to cells, etc. produced by nuclear transfer, none of these references disclose cells, etc. that resulted from the use of senescent or near-senescent cells as a donor for nuclear transfer.

For at least the above reasons, applicants submit that claims 1, 8, 21, 22, 27, 29, 37, 78 and 92 and their dependent claims are not anticipated by the cited references, as the cited references do not disclose, either expressly or inherently, all of the features of Applicants' claims. Reconsideration and withdrawal of the rejections, including the 102(b) rejection under Robl *et al.* and Evans *et al.*, is respectfully requested.

Conclusion

In this Response, Applicants have only addressed the issues raised by the Examiner in the most recent Notice of Noncompliant Amendment. Thus, Applicants have complied with MPEP 714 II F (C) which states, "Applicant's reply is required to include the corrected section of the amendment." All other issues raised by the non-final rejection of April 4, 2007 have been addressed in Applicants' previous replies.

Applicants submit that the Reply is in compliance with 37 C.F.R. § 1.121. Applicants respectfully submit that all of the pending claims are in form for allowance, but expressly

reserve their right to argue the patentability of the subject matter of any one of the dependent claims in a future proceeding. If the Examiner believes, however, that any matters remain outstanding, applicant respectfully requests that the Examiner call the undersigned.

Dated: July 28, 2008

Respectfully submitted,

By _____

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